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IN THE

Supreme Court of the United States

October Term, 1954

No. 184

MAC Q. WILLIAMSON, Attorney General of the State of Oklahoma, et al., *Appellants,*

v.

LEE OPTICAL OF OKLAHOMA, INC., ET AL.

On Appeal From the District Court of the United States for the Western District of Oklahoma

MOTION FOR LEAVE TO JOIN AS AMICI CURIAE IN THE BRIEF OF THE GUILD OF PRESCRIPTION OPTICIANS OF AMERICA, INC.

OF THE AMERICAN COMMITTEE ON OPTICS AND VISUAL PHYSIOLOGY; OKLAHOMA CITY ACADEMY OF EYE, EAR, NOSE & THROAT; CALIFORNIA MEDICAL ASSOCIATION; LOS ANGELES SOCIETY OF OPHTHALMOLOGY & OTOLARYNGOLOGY; MEDICAL SOCIETY OF THE STATE OF PENNSYLVANIA CONSERVATION OF VISION COMMITTEE; NEW JERSEY OPHTHALMOLOGICAL SOCIETY; NORTH CAROLINA EYE, EAR, NOSE & THROAT SOCIETY; PACIFIC COAST OTO-OPHTHALMOLOGICAL SOCIETY; PENNSYLVANIA STATE OPHTHALMOLOGICAL & OTOLARYNGOLOGICAL SOCIETY; PHILADELPHIA COUNTY MEDICAL SOCIETY CONSERVATION OF VISION COMMITTEE; READING OPHTHALMOLOGICAL SOCIETY; SAN BERNARDINO MEDICAL SOCIETY; SECTION ON OPHTHALMOLOGY, MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA; SOUTH CAROLINA ASSOCIATION OF OPHTHALMOLOGY.

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The American Committee on Optics and Visual Physiology; Oklahoma City Academy of Eye, Ear, Nose & Throat; California Medical Association; Los Angeles Society of Ophthalmology & Otolaryngology; Medical Society of the State of Pennsylvania, Conservation of Vision Committee; New Jersey Ophthalmological Society; North Carolina Eye, Ear, Nose & Throat Society; Pacific Coast Oto-Ophthalmological Society; Pennsylvania State Ophthalmological & Otolaryn-

gological Society; Philadelphia County Medical Society Conservation of Vision Committee; Reading Ophthalmological Society; San Bernardino Medical Society; Section on Ophthalmology, Medical Society of the District of Columbia; and South Carolina Association of Ophthalmology hereby respectfully move for leave to join as amici curiae in the brief of the Guild of Prescription Opticians of America, Inc. in this case.

The consents of both parties have already been given to the Guild for filing of its brief, as well as to the American Optometric Association, Inc. In addition, briefs amici curiae have been filed for the States of Arkansas, California, Kansas, and Mississippi.

The consent of the attorney for the appellees to the request of the moving parties has been obtained. The consent of the attorney for the appellants was requested but denied.

The American Committee on Optics and Visual Physiology is composed of representatives from the Section on Ophthalmology, American Medical Association, the American Ophthalmological Society, the American Academy of Ophthalmology and Otolaryngology, and the Association for Research in Ophthalmology. It represents virtually all qualified licensed ophthalmologists throughout the United States. Its purpose and function is to promote the public interest in visual care by coordinating and disseminating information on matters of significance in the science and profession of ophthalmology, and by maintaining the highest professional ethical standards.

The medical and ophthalmological societies listed above represent qualified licensed physicians and ophthalmologists in their respective geographical areas. The Oklahoma City Academy of Eye, Ear, Nose & Throat states that it

> is the only Ophthalmological Society in the State and is made up of members both in and out of Oklahoma City. It is our belief that it represents the opinion of the State ophthalmologists.

Ophthalmology is the medical science and profession devoted to the examination, diagnosis and treatment of all diseases of the eye, including the refraction or measurement of a patient's visual powers and the issuance of prescriptions for corrective lenses. The ophthalmologist is a doctor of medicine qualified by specialized training and experience, and by statute, to treat by means of medicine, surgery and refractive procedures any and all disorders and malfunctions of the human eye.

The moving parties firmly believe in and support state regulation of the field of visual care. They endorse in general the aim of the Legislature of the State of Oklahoma. They object, however, to the manner in which Section 2 of Enrolled House Bill 953, enacted by the Legislature of Oklahoma in 1953, under the guise of promoting the public health and welfare but in fact to the detriment of the medical profession, has advanced not the public's interest in eyesight, but the economic interests of the optometrist. They believe that it is important that the unconstitutionality of Section 2 of the Oklahoma Statute be exposed at this time so that it may not serve as a pattern for the enactment by other states of similar legislation on behalf of optometrists.

Section 2 of the Oklahoma Act makes it unlawful for any person, other than a licensed physician or optometrist,

> "to fit, adjust, adapt or to in any manner apply lenses, frames, prisms, or any other optical appliances to the face of a person, or to duplicate . . . or replace into the frames, any lenses"

except as authorized by written prescription from an Oklahoma licensed physician or optometrist,

> "provided, however, that the physician or optometrist writing such prescription shall remain responsible for the full effect of the appliances so furnished by such other person."

By this provision, the Oklahoma Act discriminates against the ophthalmologist, without corresponding benefit to the public, in two distinct ways. First, by its requirement for written prescriptions as prerequisite to the replacement or duplication of lenses and frames, without a corresponding requirement that optometrists issue prescriptions at all, Section 2 tends, without any benefit therefrom to the public interest, directly to force the patients of the ophthalmologist to seek the services of his optometric competitor. Ophthalmological patients may not replace lenses or frames through the optician unless they have retained or can duplicate their prescription. No such limitation exists if the ophthalmological patient goes to an optometrist; he may duplicate lenses by means of the lensometer or fit new frames, all without prescription according to the statute. Thus, the optometrist, who issues no prescription, retains a stranglehold on all his original customers and attracts patients of the ophthalmologist besides.

Second, although all 48 states and the District of Columbia have legislated in the field of visual care, Oklahoma is the only State that legislatively forces the ophthalmologist to be legally responsible and liable for the filling of prescriptions, a process over which he has no effective control. This inability to supervise or fulfill such statutory responsibility flows from the fact that an ophthalmologist can neither dictate the place to which his prescription is taken nor compel the patient to return once the prescription is filled. The ophthalmologist may, to be sure, suggest or recommend a particular optician and, if he desires, may request that the patient come back, but enforcement, as a matter both of law and of ethics, is impossible. Moreover, under the Oklahoma statute the burden of responsibility for the deeds of another falls solely on the ophthalmologist and not at all on the optometrist, for the latter is engaged in his integrated operation of examination plus dispensing. As a consequence of the foregoing, the statute delegates to each individual ophthalmologist in the State of Oklahoma official responsibility, as a licensor, for the standards and

conduct of every optician, as licensee, everywhere. His situation is not unlike that of a physician forced by legislative fiat to guarantee the performance of every pharmacist who fills his prescriptions. The desirable objective of assuring correct filling of prescriptions by opticians can and should properly, as in the case of the pharmacist, be obtained by state licensing of opticians as is now done in at least twelve states. In such event, the public gains and none save those incapable of meeting licensing standards suffer.

The dispensing optician is an essential entity in the field of public eye care. While others now emulate his services, it has been his historical function to complement the services of the eye physician in refractive patient care. It is contrary to the public interest to deny his services to the public and to the practicing ophthalmologist.

For the foregoing reasons the moving parties wish to join in the brief of the Guild of Prescription Opticians of America, Inc. as amici curiae to urge affirmance of the judgment of the court below holding unconstitutional Section 2 of the Oklahoma Act.

Respectfully submitted,

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